(1) Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

FELIX CABAN, Jr.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition for Writ of Certiorari to the
Appellate Court of Illinois,
First Judicial District

PETITION FOR WRIT OF CERTIORARI

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45 pp

QUESTION PRESENTED

1. Where the State prosecutor persuaded a judge erroneously to vacate a valid conviction (a final judgment) that was entered after an agreed plea of guilty, does it violate the federal constitutional guarantee against double (former) jeopardy, to force defendant to trial or to plead again?

PARTIES INVOLVED

Petitioner, Felix Caban, Jr., was the defendant in the Circuit Court of Cook County, Illinois; the Appellant in the Appellate Court of Illinois; and the Petitioner in the Illinois Supreme Court.

Respondent, People of the State of Illinois, was the Plaintiff in the Circuit Court of Cook County, Illinois; the Appellee in the Appellate Court of Illinois; and the Respondent in the Illinois Supreme Court.

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1. Where the State prosecutor persuaded a judge erroneously to vacate a valid conviction (a final judgment) that was entered after an agreed plea of guilty, to force defendant to trial or to plead again, violates the federal constitutional guarantee against double (former) jeopardy.

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

Petitioner, Felix Caban, Jr., (hereafter, defendant), prays that a writ of certiorari issue to the Appellate Court of Illinois, First Judicial District, to review its judgment [on interlocutory appeal per Ill.Sup.Ct.R. 604(f)], affirming the judgment of the Circuit Court of Cook County, Illinois (which, inter alia, denied his motion to dismiss on double jeopardy grounds), and remanding for trial.

Opinion and Orders Below

The Opinion of the Appellate Court of Illinois, First Judicial District, Sixth Division, No. 1-99-1136, dated January 12, 2001, affirms the judgment of the Circuit Court -- that (inter alia) denied defendant's motion to dismiss on double jeopardy grounds -- and remands for trial. The Appellate Court's Opinion is set out at App. A, pp. App. 1-19.

The Order of the Appellate Court of Illinois, First Judicial District, Sixth Division, No. 1-99-1136, February 27, 2001 denying Petition For Rehearing, is set out at App. B, p. App. 20.

The unreported Order of the Illinois Supreme Court, No. 91233, dated June 6, 2001, denying Petition For Leave To Appeal, is set out at App. C, p. App. 21.

Jurisdictional Statement

The judgment sought to be reviewed was entered by the Illinois Appellate Court on January 12, 2001. (App. A) Rehearing was denied on February 27, 2001. (App. B) The Illinois Supreme Court denied Petition For Leave To Appeal by Order dated June 6, 2001. (App. C)

Jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

Constitutional Provisions Involved

The federal constitutional provisions involved are the guarantee against double jeopardy of the Fifth Amendment to the United States Constitution, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. These provisions are as follows:

> "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . ." Amend. V, U.S. Const.

> "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ." Amend. IV, sec. 1, U.S. Const.

STATEMENT OF THE CASE

Felix Caban, Jr., defendant-appellant (hereafter, defendant) was sentenced for murder to 52 years (R 21), pursuant to a plea agreement concurred in by the Hon. Thomas Sumner. (See R 3-22.) Over defendant's objections, the judgment was vacated (C 4) on motion of the State (C 14), and defendant's motion for reconsideration (C 147) was denied (R II, 3-4), because under then-law, 730 ILCS 5/5-8-1(a)(1)(c)(ii), the offense (person 17 or over, killing person under 12) called for a mandatory natural life sentence; and the prosecution proceeded.

Defendant argued, inter alia, that the statute requiring a mandatory natural life sentence, is unconstitutional for violation of an Illinois State constitutional provision known as the single-subject rule. (C 23-25)

The defense also argued that the trial court should defer its ruling until the Illinois Supreme Court ruled on the constitutionality of the statute, which issue was already before it, and decision by the Illinois Supreme Court was then imminent. (See defendant's repeated suggestion to the trial court, C 24 & C 33, that this be done.)

The court (R II, 3-6) denied defendant's motion to dismiss on grounds of former jeopardy. (C 101)

After Notice of Appeal was filed herein (Feb. 23, 1999) (C 155), on November 18, 1999, the Illinois Supreme Court held the statute unconstitutional, in People v. Wooters, 188 Ill.2d 500, 722 N.E.2d 1102, 243 Ill.Dec. 33 (1999).

Defendant appealed to the Appellate Court of Illinois, pursuant to Ill.Sup.Ct.R. 604(f), from the Circuit Court's orders allowing the State's motion to vacate the plea, denying defendant's motion for discharge on double jeopardy grounds, and denying his motion for reconsideration. The Appellate Court affirmed (App. A, pp. App. 1-19), and denied rehearing (App. B, p. App. 20), and the Supreme Court of Illinois denied leave to appeal. (App. C, p. App. 21)

Statement of Facts

Defendant, age 26 at the time of the offense (R 5) and 28 at the time of change of plea (R 12), was charged with first degree murder for causing the death of Arturo Barrera, the 5-year-old son of his live-in girlfriend. (R 5, 8, 20)

After the State and defendant came to an agreement for a negotiated plea, on the State's express offer to the defendant -- defendant would plead guilty to first degree murder and the State would recommend a sentence of 52 years (R 4) -- the court, after hearing a summary of the facts of the offense (R

4-12), concurred in the agreement. (R 13) The plea was entered (R 13-20), jury waived (R 18), Presentence Investigation waived (R 18-19), finding of guilty with judgment on the finding (R 20), and the court sentenced defendant, "pursuant to the agreement," (R. 21), to 52 years (R 21), with credit for 661 days time considered served. (R 21-22)

In the course of entering his plea, defendant was advised by the court that "These charges are subject to a possible penalty of incarceration in the penitentiary for a determinate period of time between twenty and sixty years, a fine of up to twenty-five thousand dollars or both, do you understand that?" To which the defendant answered, "Yes." (R 15) Whereupon defense counsel stated, "Judge, extended term is also a possibility because of the age of the victim." (R 15) The court then advised defendant that he could be subject to a penalty of (R 15) "up to a hundred years in the penitentiary," (R 16), which defendant stated he understood. (R 16)

Defendant was not advised of any possibility of natural life imprisonment, nor was he advised that such penalty supposedly was mandatory for murder when a person under 12 years of age was killed by a person 17 or over. (See R 13-22.)

Thereafter, the State filed a Motion (to Vacate Plea of Guilty and Reset Cause for Trial) (C 14-15), asserting that the sentence pursuant to the aforesaid

agreement, is contrary to a statute, 730 ILCS 5/5-8-1(a)(1)(c)(ii),[1] that requires the imposition of a natural life sentence where -- as at bar -- the victim is under 12 years of age and the offender is 17 or older.

The court granted the State's motion (Motion, C 14-15; granted, C 4), denied defendant's motion to reconsider (Motion, C 147; denied, R II, 3-4), and denied defendant's motion to dismiss on former jeopardy grounds. (Motion, C 101; Memo, C 144; denied, R II, 5) Defendant appealed (in the nature of an interlocutory appeal), per Ill.Sup.Ct.R. 604(f).

Defendant argued in the Circuit Court, inter alia, that the above statute calling for a mandatory natural life sentence is unconstitutional for violation of an Illinois constitutional provision known as the single-subject rule. (C 23-25) After Notice of Appeal was filed herein (Feb. 23, 1999) (C 155), on November 18, 1999, the Supreme Court so held, in People v. Wooters, 188 Ill.2d 500, 722 N.E.2d 1102, 243 Ill.Dec. 33 (1999).

As the Appellate Court stated:

> "In People v. Wooters, 188 Ill. 2d 500, 510-20 (1999), our supreme court held that Public Act 89-203 violated the single-subject

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[1] In its Motion, p. 2 (C 15), The State mistakenly miscited the statute as 720 ILCS, rather than 730 ILCS.

clause of the Illinois Constitution. The effect of an unconstitutional amendment is to restore the statute as it existed prior to the amendment. [citation omitted]." (Op. p. 6-7; App. A, p. 8)

However, Wooters was not decided until after the events transpired in the instant case.

Raising the Federal Question

In the Circuit Court of Cook County, Illinois:

Defendant raised the federal question presented, in the Circuit Court of Cook County, Illinois, as follows:

(i) OBJECTING TO VACATION OF JUDGMENT ON MOTION OF STATE:

Over defendant's objections -- wherein defendant argued, inter alia, that that statute is unconstitutional for violation of the single-subject rule (C 23-25)[2] -- the judgment was vacated (C 4) on motion of the State (C 14); and defendant's motion for reconsideration (C 147) was denied. (R II, 3-4)

The defense also argued that the trial court should defer its ruling until the Illinois Supreme Court ruled on the constitutionality of the statute, which issue was already before it, and decision by the Illinois Supreme Court was then imminent. (See defendant's repeated suggestion to the trial court, C 24 & C 33, that this be done.)

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[2] After Notice of Appeal was filed herein (Feb. 23, 1999) (C 155), on November 18, 1999, the Illinois Supreme Court so held, in People v. Wooters, 188 Ill.2d 500, 722 N.E.2d 1102, 243 Ill.Dec. 33 (1999).

(ii) MOVING TO DISMISS ON FORMER JEOPARDY GROUNDS.

Defendant moved to dismiss on former jeopardy grounds (Motion, C 101; Memo, C 144), and the court denied the motion to dismiss. (R II, 5)

The defense also argued that the trial court should defer its ruling until the Illinois Supreme Court ruled on the constitutionality of the statute, which issue was already before it, and decision by the Illinois Supreme Court was then imminent. (See defendant's repeated suggestion to the trial court, C 24 & C 33, that this be done.)

In the Illinois Appellate Court:

Defendant raised the federal question presented, in his Brief on Appeal in the Appellate Court of Illinois. In his Appellant's Brief ["Def. Br."], Issue 1, is: "Whether defendant's constitutional right to be free from double jeopardy was violated when the court denied his motion for discharge on grounds of former jeopardy." (Def. Br. pp. 5, 8) That this issue was squarely raised on appeal, is evident from the Appellate Court's treatment in its Opinion. (App. A, pp. App. 15-19)

Defendant also argued to the Appellate Court, that the trial court should have held its ruling in abeyance pending the imminent decision of Wooters

by the Supreme Court of Illinois. (See Def. Br. p. 12.)

In the Supreme Court of Illinois:

Defendant raised the above issue in the Supreme Court of Illinois, in his Petition for Leave to Appeal, which was denied without opinion. (App. C, p. App. 21) The precise formulation of the federal constitutional issue, as framed in his Petition for Leave to Appeal, is set out at p. 6 of that Petition.

REASONS FOR GRANTING CERTIORARI

1. Where the State prosecutor erroneously persuaded a judge to vacate a valid conviction (a final judgment) that was entered after an agreed plea of guilty, to force defendant to trial or to plead again, violates the federal constitutional guarantee against double (former) jeopardy.

Since negotiated pleas of guilty are such an integral component of the American criminal justice system, Certiorari should be allowed so this Court can resolve this important issue that greatly impacts on the continuing serviceability and utility of the negotiated plea process.

Defendant's plea agreement -- whereby defendant was to be sentenced to 52 years -- when accepted by the court (R 13) and consummated by the parties, with defendant pleading guilty (R 13-20) and being sentenced to 52 years "pursuant to the agreement," (R 21), resulted in a final judgment. Double jeopardy principles are applicable because after defendant pled guilty, he was sentenced, and there was a final judgment. See Brown v. Ohio, 432 U.S. 161, 53 L.Ed.2d 187 (1977); United States v. Santiago Soto, 825 F.2d 616 (1 Cir. 1987) (no final judgment merely upon plea with no sentencing; but if sentence upon plea, there would be final judgment). This is not a case where defendant's actions after the plea, voided the plea agreement. Ricketts v. Adamson,

483 U.S. 1, 97 L.Ed.2d 1 (1987).

The judge's ruling vacating that final judgment, was based on an unconstitutional, void statute; viz.:

The judge vacated that final judgment on motion of the prosecution over defendant's objections, and persisted in this ruling on defendant's motion for reconsideration, and denied defendant's motion to dismiss on double jeopardy grounds,[3] for totally erroneous reasons -- that a valid statute existed that required a greater sentence. The argument of the State, adopted by the trial court -- that court could not, had no power to, sentence to only 52 years -- is based upon a statute that was, soon after, declared void as unconstitutional.

The unconstitutionality of the statute had been argued to the trial court, and was upon review in the Illinois Supreme Court. Subsequently, the statute was held invalid by the Supreme Court of Illinois. People v. Wooters, 188 Ill.2d 500, 722 N.E.2d 1102, 243 Ill.Dec. 33 (1999); see pp. 4-5 & 7-8, supra.

The trial court's action here is equivalent to a judge granting a prosecutor's motion for mistrial when there is no manifest necessity to grant a mistrial. In

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[3] Record references are provided in the Statement of the Case, Statement of Facts, and Raising the Federal Question sections of this Petition, supra, and not repeated here.

both situations -- erroneous grant of a mistrial, and here, erroneous vacation of a valid, final judgment entered on a valid negotiated plea -- defendant is forced to face jeopardy twice, where the reason for aborting the prosecution is for the sole benefit of and at the request of the prosecution, and there is no manifest necessity for the judge's termination of trial, or, as here, for vacating a final judgment. In such case, absent manifest necessity, requiring defendant to again be tried, violates double jeopardy. Ricketts, supra.

Implicit in Ricketts, supra, is that if the plea is vacated -- not because of defendant violating the plea agreement, but for reasons (as here) not attributable to the defendant -- to vacate the final judgment on motion of the prosecution, and attempt to force defendant to plead again, violates defendant's constitutional right not to be subjected to double jeopardy.

The situation here is that the final judgment entered after agreement of the parties and acceptance by the court, was vacated, based upon the court's adoption of the prosecutor's erroneous assertion that a statute (then under constitutional attack -- and then pending in Illinois Supreme Court) prohibited the sentence agreed upon in the plea agreement.

There was no manifest necessity to vacate the plea. United States v. Perez, 22 U.S. 579, 6 L.Ed. 165

(1824); see Johnson v. Karnes, 198 F.3d 589 (6 Cir. 1999) (reversing denial of habeas to State prisoner; barring retrial after mistrial declared without "manifest necessity) (one factor inducing Court of Appeals to conclude that double jeopardy provision was violated by mistrial, was trial court's "failure seriously to consider alternatives to declaring a mistrial . . . ." Id. at 595). Here, the court could have and should have -- as suggested by the defense -- deferred ruling on the State's motion until the Illinois Supreme Court ruled on the constitutionality of the statute, which issue was then pending before that Court. Thus, here, the trial court failed seriously to consider and utilize a viable alternative to vacating the judgment here. This militates in favor of finding there was no manifest necessity here.

Since negotiated pleas of guilty are such an integral component of the American criminal justice system, Certiorari should be allowed so this Court can resolve this important issue that greatly impacts on the continuing serviceability and utility of the negotiated plea process.

CONCLUSION

For the foregoing reasons, certiorari should be allowed.

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